

Anand Mohan

vs

Union of India (UOI) and Ors

5 December 2001

Allahabad High Court

Citations: II (2002) ACC 260, 2002 (1) AWC 819

Bench: S Narain, V Sahai

JUDGMENT

Sudhir Narain, J.

1. The petitioner has, *inter alia*, sought a writ for declaring Section 129 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') as ultra vires. This section provides that every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear a protective headgear of such description as may be specified by the State Government by rules made by it in this behalf, and different descriptions of headgears may be specified in such rules in relation to different circumstances or different class or description of motor cycles. This condition shall, however, not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle in a public place, wearing a turban. It also provides that it will be open to the State Government to provide for such exceptions, as it may think fit, by making rules. Section 129 of the Act reads as under :

"129. Wearing of protective headgear,--Every person driving or riding (otherwise than in a side car, on a motor cycle of any class or description) shall, while in a public place, wear a protective headgear of such description as may be specified by the State Government by rules made by it in this behalf, and different descriptions of headgears may be specified in such rules in relation to different circumstances or different class or description of motor cycles :

Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban :

Provided further that the State Government may, by such rules, provide for such exceptions as it may think fit.

Explanation. -- "Protective headgear" means a helmet which,--

(a) by virtue of its shape, material and construction, could reasonably be expected to afford to the person driving or riding on a motor cycle a degree of protection from injury in the event of an accident; and

(b) is securely fastened to the head of the wearer by means of straps or other fastenings provided on the headgear."

This provision corresponds to Section 85A of the Motor Vehicles Act, 1939, with some modifications.

2. We have heard Sri Anand Mohan, the petitioner in person. He has challenged the vires of this provision. The vires of any provision of any enactment can be challenged only on two grounds, namely,--

(i) lack of legislative competence, and (ii) violation of any fundamental rights guaranteed under Chapter III of the Constitution or any other constitutional provision as held by the Apex Court in the case of *State of A. P. and Ors. v. MCDOWELL & Co. and others*, (1996) 3 SCC 709. It was observed as follows :

"It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say if an enactment is challenged as violative of Article 14. It can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, If an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary" or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them."

3. The petitioner has challenged the validity of the provisions of Section 129 of the Act on the ground that it is violative of Article 19(1)(g) of the Constitution. It confers right to all the citizens to practise any profession, or to carry on any occupation, trade or business. Article 19(1)(d) confers rights on every citizen to move freely throughout the territory of India. The petitioner has not shown in what manner these rights have been curtailed by enacting the provisions of Section 129 of the Act. Section 129 of the Act permits a person to drive or ride on a motor cycle of any class or description but he has to wear protective headgear (helmet) conforming to the standards of Bureau of Indian Standards.

4. The contention of the petitioner is that wearing of a protective headgear is more injurious to a person wearing it because the driver or rider has to put a heavy load over his head while driving or riding on a motor cycle and this will put hindrance particularly the person driving the motor cycle. Secondly, It is urged that it will be difficult for him to see comfortably the side view either towards right or left because of the nature of the headgear.

5. The State Government has framed Uttar Pradesh Motor Vehicles Rules, 1998 (hereinafter referred to as the "Rules"). Rule 201 keeping in view the provision of Section 129 of the Act has provided the specification of the protective headgear, which is to conform to the specification given in Sub-rule (2) of the Rules. Rule 201 reads as under :

"201. Protective headgear-Wearing of.--(1) Every person while driving or riding a motor cycle, a scooter or moped shall wear a protective headgear conforming to the specification given in Sub-rule (2) below.

(2) Each protective headgear shall--

(i) be of specifications of Bureau of Indian Standards ;

(ii) be permanently and legibly labelled in such manner that level or levels can be read easily without removing padding or any other permanent material description such as :

(a) manufacturer's name or identification ;

(b) size ;

(c) month and year of manufacture ; and

(d) the mark of the Bureau of Indian Standards ;

(iii) have minimum three adhesive type retroflective red colour strips of the size of 2 centimetres multiplied by 15 centimetres affixed horizontally on back of the headgear which will illuminate during the night :

Providing that Sub-rule (1) of this rule shall not apply to--

(a) every pillion rider of a motor cycle, scooter or a moped,

(b) any person wearing a turban while driving a motor cycle, scooter or a moped in a public place.

Explanation. -- For the purposes of this rule turban means cloth 6 metres by 82 centimeters which any person while driving a motor cycle, scooter or moped in a public place may tie as such around his head."

6. The Legislature had taken care of the difficulty, which may be felt by a person driving the vehicle. The person has to wear a protective headgear conforming to the standards of Bureau of Indian Standards. The petitioner has nowhere stated that the headgear prescribed for wearing by a person driving or riding on a vehicle is not according to the standards of Bureau of Indian Standards. He has also not challenged the standards laid down under Rule 201 of the Rules. There is no reason that all the difficulties might have been taken into consideration while prescribing the nature of the helmet to be worn by the person driving or riding on a motor cycle.

7. The provision is a beneficial legislation for protecting the life of a person driving or riding on a motor cycle. Article 21 of the Constitution makes provision for safe-guarding the life of a person. If an accident takes place and the person driving or riding on a motor cycle suffers injuries on his head, he may not be injured if he is wearing a helmet. It is in consonance with the provisions of Article 21 of the Constitution of India. The provision is neither arbitrary nor unreasonable. In *State of Punjab and Ors. v. Mohinder Singh Chawla, etc.*, 1996 AWC (Suppl.) 745 (SC): AIR 1997 SC 1225, it was held that the right to health is an integral right to life. The Government has constitutional obligation to provide the health facilities to every person.

8. Even If it is assumed that the right of a person to move freely is restricted by enactment compelling a person to wear protective headgear, it would amount to a reasonable restriction under Clauses (5) and (6) of Article 19 of the Constitution to protect the life of a person when he is involved in an accident while driving or riding on a motor-cycle.

9. It is next contended that the Senior Superintendent of Police, Allahabad issued a notification on 12.10.2001 to the effect that if any person does not wear protective headgear he would be liable to pay a fine of hundred rupees and again second time he shall be liable to pay three hundred rupees as fine. The Senior Superintendent of Police is entitled to issue such a notification under the provision of Section 177 of the Act which reads as under :

"177. General provision for punishment of offences.--Whoever contravenes any provision of this Act or of any rule, regulation or notification made there under shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees."

10. This provision has been inserted so that the person who does not comply with the requirement of Section 129 is to be punished. It is with a view to enforce this provision strictly and it is the duty of Senior Superintendent of Police that every person driving or riding on a motor cycle should wear protective headgear. There is no illegality in the notification issued by the Senior Superintendent of Police.

11. The petitioner then contended that a mandamus be issued commanding the State Government and other functionaries of the State :

(i) to widen roads, streets, lanes ;

(ii) to remove the encroachment from the road etc. ; and

(iii) to repair roads, street, lanes etc.

12. It is contended that the accidents take place either because the road is too narrow or streets are dark. The local authorities and other functionaries of the State Government are bound to function in accordance with law and in the spirit of public welfare. They have to examine that there is no encroachment on the roads. As the petitioner has not specifically sought any relief in regard to removal of any encroachment in any road, no mandamus can be issued in this regard to any authority.

13. So far as widening of road is concerned, it is for the State Government or local authority to examine the matter after taking into consideration its finance and other matters.

14. The last prayer in the writ petition is that a mandamus be issued restraining the respondents from permitting the three wheelers (Vikram tempos) owners or drivers to drive rashly, overloaded with passengers, emitting fumes.

15. The Regional Transport Officer issues licence to the drivers of three wheelers and puts conditions on the driver and owners of the vehicle. If they violate those terms and conditions of the licence, it can be cancelled if the owner or the driver violates the conditions of the licence. The other authorities including the police officer can take action against the erring

drivers or owners. If any objection is raised in regard to a particular tempo, there is no doubt, the authority concerned shall take suitable action against such owner or driver of three wheelers.

16. We do not find any merit in the writ petition and It is accordingly, dismissed.